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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/536,885

05/31/2005

Ebrahim Firoozabady

63-000600US

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12/04/2008

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

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ALAMEDA, CA 94501

EXAMINER

KALLIS, RUSSELL

ART UNIT

PAPER NUMBER

1638

MAIL DATE

DELIVERY MODE

12/04/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/536,885	<b>Applicant(s)</b> FIROOZABADY, EBRAHIM	
	<b>Examiner</b> RUSSELL KALLIS	<b>Art Unit</b> 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,5,10,18,21-23,26,27,31,36,43-47 and 50-52 is/are pending in the application.
- 4a) Of the above claim(s) 26,27,31,36,43-47 and 50-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,10,18 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### **DETAILED ACTION**

Claims 1, 5, 10, 18, 21-23, 26, 27, 31, 36, 43-47 and 50-52 are pending. Claims 26, 27, 31, 36, 43-47 and 50-52 are withdrawn. Claims 1, 5, 10, 18, and 21-23 are examined.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

Claims 1, 10, 18, and 21-22 remain rejected under 35 U.S.C. 102(a) as being anticipated by Mezzetti B. *et al.* BMC Biotechnology; Vol. 2, no: 18 published 9/27/2002. This rejection is maintained for the reasons of record set forth in the Official action mailed 4/30/2008.

Applicant's arguments filed 9/05/2008 have been considered but are not deemed persuasive.

Applicant asserts that the teachings of Mezzetti do not anticipate the limitations of claim 1 because they are directed to transformation of callus tissue rather than transformation of cells that did not go through a callus intermediate stage (response page 7).

Applicant has grossly misapprehended the reference. The reference clearly teaches that the method employed is an organogenic one (i.e. a method that skips the callus phase and regenerates organs directly from meristematic tissue) as stated in the previous office action. Further, Applicant has also grossly misapprehended the term meristematic bulk. It does not mean callus intermediate. Meristem cells are stem cells not callus cells. The reference distinguishes itself from the callus methods on page 2 in the first column paragraphs 2 and 3. Paragraph 2 discusses transformation using callus tissue. Furthermore, Applicants specification discusses using the same cultivated meristematic tissues as those used in Mezzetti (see Examples 1 and 2 on page 40 paragraph 0138 for example).

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Claims 1, 5, 10, 18, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mezzetti in view of U.S. 6,653,530 filed February 13, 1998. This rejection is maintained for the reasons of record set forth in the Official action mailed 4/30/2008. Applicant's arguments filed 9/05/2008 have been considered but are not deemed persuasive.

Applicant asserts that the Mezzetti reference is deficient in the lack of callus intermediate and that the cell transformation methods of the 6,653,530 Patent are deficient (response pages 8-9).

The Mezzetti arguments are presented supra.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

No claim is allowed.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to RUSSELL KALLIS whose telephone number is (571)272-0798. The examiner can normally be reached on M-F 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Russell Kallis/  
Primary Examiner, Art Unit 1638  
December 2, 2008